

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Donald Sullivan & Sons, LLC and John Ceraldi and Brian Ostrowski. Cases 34-CA-9592-1 and 34-CA-9592-2

September 26, 2001

DECISION AND ORDER

BY MEMBERS LIEBMAN, TRUESDALE, AND WALSH

Upon charges and amended charges filed by John Ceraldi, an individual, and Brian Ostrowski, an individual, the General Counsel of the National Labor Relations Board issued a consolidated complaint on May 24, 2001, against Donald Sullivan & Sons, LLC, the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. Although properly served copies of the charges, amended charges, and consolidated complaint, the Respondent failed to file an answer.

On July 6, 2001, the General Counsel filed a Motion for Summary Judgment with the Board. On July 10, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.

Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated June 18, 2001, sent by facsimile transmission and regular mail, notified the Respondent that unless an answer was received by June 22, 2001, a Motion for Summary Judgment would be filed. On June 18, 2001, the Region received a facsimile transmission from the Respondent in connection with the June 18 letter described above, asking, among other things, "What this is in regards to."

The Region responded by letter dated June 18, 2001, reiterating that its previous communication was in regards to the consolidated complaint. The Region's letter pointed out that the consolidated complaint had been

personally received by Arthur Sullivan, Respondent's owner and manager, on May 26, 2001, that instructions were attached to the consolidated complaint, and that the Respondent had been involved in a previous case with the Region. The Respondent was again advised that if no answer to the consolidated complaint was received by June 22, 2001, the Region would seek summary judgment. The Respondent did not file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a limited liability company licensed to do business in the State of Connecticut with its principal place of business located in Plantsville, Connecticut, and has been engaged as a plumbing contractor in the construction industry doing residential and commercial construction. During the 12-month period ending April 30, 2001, the Respondent, in conducting its business operations, purchased and received at its facility goods valued in excess of \$50,000 directly from points outside the State of Connecticut. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions that are set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act.

Arthur Sullivan	Owner/Manager
-----------------	---------------

Martin Sullivan	Owner/Foreman
-----------------	---------------

John Ceraldi and Brian Ostrowski each filed unfair labor practice charges against the Respondent in Cases 34-CA-8799-1 and -2, which resulted in a Board Decision and Order dated January 18, 2001, and reported at 333 NLRB No. 7.

On or about February 15, 2001, the Respondent, in retaliation for the conduct described above, threatened to file a lawsuit against Ceraldi and Ostrowski by serving each of them with a civil summons and complaint it had purportedly filed against them in the State of Connecticut Superior Court.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) by threatening to file a lawsuit against John Ceraldi and Brian Ostrowski in retaliation for the unfair labor practice charges they filed in Cases 34-CA-8799-1 and -2, we shall order the Respondent to cease and desist from this conduct, and to reimburse employees Ceraldi and Ostrowski for all reasonable legal fees and expenses incurred by them in connection with the threatened lawsuit, plus interest as computed in *New Horizons for the Retarded*, 287 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Donald Sullivan & Sons, LLC, Plantsville, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening, in retaliation for the unfair labor practice charges John Ceraldi and Brian Ostrowski filed against the Respondent in Cases 34-CA-8799-1 and -2, to file a lawsuit against them by serving each of them with a civil summons and complaint that the Respondent had purportedly filed against them in the State of Connecticut Superior Court.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Reimburse employees Ceraldi and Ostrowski for all reasonable legal fees and expenses incurred by them in connection with the threatened lawsuit, in the manner set forth in the remedy section.

(b) Within 14 days after service by the Region, post at its facility in Plantsville, Connecticut, copies of the attached notice marked "Appendix."¹ Copies of the notice,

on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 15, 2001.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 26, 2001

Wilma B. Liebman, Member

John C. Truesdale, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten, in retaliation for the unfair labor practice charges John Ceraldi and Brian Ostrowski filed against us in Cases 34-CA-8799-1 and -2, to file a lawsuit against them by serving each of them with a civil summons and complaint that we had purportedly filed against them in the State of Connecticut Superior Court.

¹ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of

the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL reimburse employees Ceraldi and Ostrowski for all reasonable legal fees and expenses incurred by

them in connection with the threatened lawsuit, plus interest.

DONALD SULLIVAN & SONS, LLC